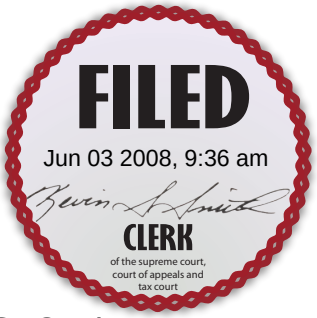

ATTORNEY FOR APPELLANT:

CHRISTINA ROSE KLINEMAN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JASON SHELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0709-CR-811
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
The Honorable Nancy Broyles, Master Commissioner
Cause No.49G05-0609-MR-178873

June 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a bench trial, Jason Shelton appeals his conviction of murder, a felony, and his resulting fifty-five year sentence. Shelton raises three issues, which we restate as: 1) whether the State introduced sufficient evidence to prove Shelton's guilt beyond a reasonable doubt; 2) whether the trial court abused its discretion in sentencing Shelton; and 3) whether Shelton's fifty-five year sentence is inappropriate given the nature of his offense and his character. Concluding that sufficient evidence exists to prove Shelton's guilt beyond a reasonable doubt, that the trial court acted within its discretion in sentencing Shelton, and that his sentence is not inappropriate given the nature of the offense and his character, we affirm.

Facts and Procedural History

On September 18, 2006, Officer Schlessinger of the Indianapolis Metropolitan Police Department was dispatched to 908 Bosart Avenue on a report of shots fired. When he arrived at the Bosart Avenue residence, he discovered the body of Tammy Cook, fatally shot on her living room couch. Eventually, it was discovered that Cook's daughter, Nichole Holland, had been dating Shelton "on and off" since October 2003. Transcript at 40. In September of 2006, Holland continued to see Shelton, but also started dating another man, Stephen Woodley. Shelton was unaware of Holland's relationship with Woodley until September 14, 2006. On that date, Holland was visiting Woodley's house and received a call from Shelton. Woodley testified that he answered the phone and the men began "cussing each other out." Id. at 180. A few days later, on September 16, Holland went to Shelton's house to end their relationship and, despite

fighting with Shelton, stayed the weekend and did not leave until Monday, September 18.

Sometime Sunday, September 17, Shelton called Woodley and asked him whether he had "fucked his bitch," id. at 183, an inquiry Woodley denied. Woodley testified that on September 18, he received another call from Shelton. During that conversation, Shelton threatened to kill Woodley, Holland, and Cook because Cook was "letting [Nichole] fuck [Woodley] in the house." Id. at 185. Later that afternoon, Shelton called Michael Young and asked for a ride in exchange for drugs. Young arrived at Shelton's house driving a small, grey Toyota pick-up truck and testified that Shelton asked him to drive to "his girl's house." Id. at 215. Holland, who was still at Shelton's house when Shelton left with Young, testified that Shelton was wearing a red shirt and jeans at the time he left.

A neighbor of Cook's on Bosart Avenue had surveillance cameras at his residence. A tape captured by one of the cameras showed a man fitting Shelton's description exiting a small Toyota pickup truck and entering the Cook residence on the day of the murder; at trial Holland positively identified this man as Shelton. Another witness who lived in the area stated that she saw a man in a red track suit exit a Toyota pickup truck and walk around the Cook residence. Another of Cook's neighbors, having heard gunshots, called 911 and then saw a man in a red shirt and jeans jump over Cook's porch into the neighboring alley. Finally, a fourth witness stated that she saw a man in a red shirt and grey pants run into the alley and heard him yell, "go man go," id. at 125, as he entered the truck. Young testified that Shelton returned to the truck with a gun in his

hand, appearing visibly shaken, and stated that he had killed "the girl's mother." Id. at 220.

Later that day, Shelton called Woodley and boasted that he had "put 10 in her mama" and was going to kill both Holland and Woodley before turning himself in. Id. at 187. Shelton then talked to his cousin, an Indiana State Police Trooper, and informed his cousin that he was involved in a shooting. Shelton's cousin assisted Shelton in turning himself in to authorities.

On September 21, 2006, the State charged Shelton with Count I, murder, a felony; Count II, assisting a criminal, a Class C Felony; and Count III, carrying a handgun without a license, a Class A misdemeanor. Before trial, the State dismissed Counts II and III and proceeded on the murder charge only. On May 14, 2007, Shelton, through counsel, waived his right to a jury trial and appeared before the bench on June 28, 2007. At the conclusion of the evidence, the trial court found Shelton guilty of murder. At sentencing, the trial court found two mitigating factors: Shelton's young age and the fact that he had three children. The trial court cited Shelton's criminal history and the nature and circumstances of the crime as aggravating factors. Specifically, the trial court noted, "there couldn't be anything more cold-blooded than what he has done." Id. at 275. The trial court then sentenced Shelton to the advisory sentence of fifty-five years. Shelton now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

Our supreme court recently reiterated our standard for reviewing a challenge to the sufficiency of the evidence:

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, footnote, and citations omitted) (emphasis in original).

B. Proof of Murder

To convict Shelton of murder, the State was required to prove beyond a reasonable doubt that he (1) with knowledge or intent (2) killed (3) another human being. Ind. Code § 35-42-1-1(1). Shelton contends that he was "erroneously convicted of [m]urder based on circumstantial evidence that did not rise to proof beyond a reasonable doubt, but merely proved to heighten the level of suspicion." Brief of Appellant at 5. Specifically, Shelton contends that because the State did not "provide any physical evidence linking Shelton to the crime by way of fingerprints, DNA [or] a weapon," id. at

6, the eyewitness testimony and Shelton's alleged confession introduced at trial did not provide proof beyond a reasonable doubt that Shelton committed the murder.

The State's failure to introduce physical evidence linking Shelton to the crime by way of fingerprints, DNA, or a weapon does not compel us to conclude that Shelton's guilt could not be proved beyond a reasonable doubt. Shelton characterizes the evidence against him as "purely circumstantial." See id. at 1. Circumstantial evidence immediately establishes collateral facts from which the main fact may be inferred. Jackson v. State, 758 N.E.2d 1030, 1036 (Ind. Ct. App. 2001). In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. Id. Eyewitness testimony places Shelton at Cook's home around the time of the murder. Although mere presence at the scene of a crime, standing alone, will not support a conviction, presence along with other circumstances may be sufficient. Roop v. State, 730 N.E.2d 1267, 1271 (Ind. 2000). Young, who drove Shelton to Cook's home, testified that when Shelton returned to the vehicle after being dropped off at Cook's home, he appeared shaken and had a gun in his hand. In the days prior to Cook's murder, Shelton threatened to kill her, Holland, and Woodley. Following Cook's murder, Shelton admitted to three different people, including Young, that he killed Cook. This was not a "purely circumstantial" case. Without reweighing the evidence or assessing witness credibility, we hold that the eyewitness accounts, coupled with the statements made by Shelton both before and after the murder, permitted the trial court to find beyond a reasonable doubt that Shelton knowingly or intentionally killed Cook.

II. Sentencing

A. Abuse of Discretion

Shelton claims that the trial court abused its discretion in sentencing him by placing too much weight on his criminal history, by finding the victim's lack of involvement in the circumstances leading to her death as an aggravator, and failing to provide "some sentencing relief for the mitigators profferred." Br. of Appellant at 5.

A trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). However, trial courts are still required to issue a sentencing statement whenever sentencing a defendant for a felony. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. We will review a trial court's sentencing decision for an abuse of discretion, which occurs when the trial court's decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). A trial court may abuse its discretion by finding aggravating circumstances unsupported by the record, omitting reasons that are clearly supported by the record and advanced for consideration, or by noting reasons that are improper considerations as a matter of law. Id. The advisory sentence for murder is fifty-five years. Ind. Code § 35-50-2-3. ("A person who commits murder shall be imprisoned for a fixed term between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.").

At the sentencing hearing, the trial court noted as "minor mitigation" that Shelton has three children and is only twenty years old. Tr. at 274. As to the aggravating factors, the trial court cited Shelton's juvenile criminal history, including true findings of battery, disorderly conduct, and possession of marijuana. The trial court also noted the nature and circumstances of the crime:

> I'm not trying to justify anybody else's behavior or in anyway blame the victim, but we do see a lot of homicide[s] where if somebody hadn't been trying to buy drugs or whatever it perhaps would not have happened. I see this woman as a complete innocent. She was the mother of this girlfriend who apparently had the unmitigated gall to see another man. And while this woman sits watching TV, he gets in a car, it's not like she's there while he's angry and finding out. And he gets into a car[,] goes over to her house, not even time to argue with her and shoots and kills her. There couldn't be anything more cold-blooded than what he has done.

Id. at 274-75. The trial court then found that the mitigators and aggravators "equal[] out to support the presumptive[1] sentence." Id. at 275.

In regard to the weight the trial court gave to Shelton's juvenile criminal history and the proffered mitigators, that argument is no longer available, as the trial court no longer can be said to have abused its discretion by improperly weighing the aggravating and mitigating circumstances. Anglemyer, 868 N.E.2d at 491. In regard to the trial court's statement as to Cook's lack of involvement in the events leading to her murder, Shelton agrees that the victim putting herself in harm's way may be mitigating, but argues that "it does not follow that a lack of involvement is necessarily aggravating." Br. of Appellant at 8 (emphasis in original). The trial court was commenting upon the

[1] Shelton committed this crime in 2006, and therefore was subject to the advisory sentencing scheme. See Ind. Code § 35-35-3-1 (effective April 25, 2005). Despite the trial court's misstatement, we will review Shelton's sentence pursuant to the advisory sentencing scheme.

nature and circumstances of the crime, which is a valid aggravator. See Lemos v. State, 746 N.E.2d 972, 975 (Ind. 2001). The trial court was not required to find the nature and circumstances of the crime as an aggravator, but did not abuse its discretion in doing so. We cannot say that the trial court abused its discretion in ordering Shelton to serve the advisory sentence.

B. Inappropriate Sentence[2]

When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). When examining both the nature of the offense and the defendant's character, "we may look to any factors appearing in the record." Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The burden is on the defendant to

[2] Although Shelton states in his Summary of the Argument that his sentence "should be deemed inappropriate in light of the nature of the offense and the character of the offender," br. of appellant at 5, and has titled his sentencing issue "Inappropriate Sentence," id. at 7, he does not actually make an argument that his sentence is inappropriate. Rather, his sentencing argument concerns primarily the aggravators and mitigators and concludes, "It was an abuse of discretion to sentence Shelton to a term greater than forty-five (45) years." Id. at 8. Reviewing a trial court's sentence for an abuse of discretion is not the same as reviewing a sentence for inappropriateness, and merely using the words "inappropriate sentence" is insufficient to invoke our independent review of an appellant's sentence. Nonetheless, given our preference for deciding cases on the merits, see, e.g., Downs v. State, 827 N.E.2d 646, 651 (Ind. Ct. App. 2005), trans. denied, and given that we have all the information we need for conducting a 7(B) review, we will address both sentencing issues.

demonstrate that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As to the nature of the offense, the trial court characterized this crime correctly when it stated, "there couldn't be anything more cold blooded than what he has done." Tr. at 275. Shelton brutally murdered his girlfriend's mother in retaliation for his girlfriend's ongoing relationship with another man. By his own admission, Shelton bragged that he had shot her ten times in the head, tr. at 187, 204, rendering the offense particularly egregious, see Mitchem v. State, 685 N.E.2d 671, 680 (Ind. 1997) (the number of times a victim is shot is a proper consideration under the nature and circumstances aggravator); see also Geralds v. State, 647 N.E.2d 369, 375 (Ind. Ct. App. 1995) (holding that it was not error for the trial court to take into account the "staggering" amount of firepower used by the defendant), trans. denied.

Although Shelton does not directly state which factors should be considered in the evaluation of his character, he does assert that his criminal history consists of only three juvenile adjudications occurring at ages twelve and sixteen. Although Shelton's criminal history is limited to offenses committed while he was a juvenile, we find these prior brushes with the criminal justice system to reflect negatively on Shelton's character as they show his disinclination to abide by the law. Moreover, Shelton was only twenty years old when he committed this offense, so the juvenile adjudications were not distant in time, and at least one adjudication – for battery, an offense against the person – is related in nature, if not in gravity, to this murder. See Haas v. State, 849 N.E.2d 550, 556 (Ind. 2006) (noting that criminal history should be assessed based upon the

chronological remoteness of the convictions as well as the gravity, nature and number of prior offenses as they relate to the current offense).

In addition to his criminal history, Shelton's actions following the murder of Tammy Cook also reflect negatively on his character. Although Shelton did turn himself in to authorities, he first felt compelled to make yet another phone call to Woodley boasting that he had killed Cook and threatening to kill both Woodley and Holland before turning himself in to police. Further, despite the overwhelming evidence presented against him at trial, including his own admissions, Shelton maintained that he was wrongly convicted and told the trial court at sentencing, "I'm not sorry for something I didn't do." Tr. at 270. Under those circumstances, we do not hesitate to find that Shelton has shown an utter lack of remorse for his crime and has displayed an overwhelming sense of disrespect for the law. Shelton has not convinced us that his fifty-five year sentence is inappropriate.

Conclusion

We conclude that the evidence presented at trial was sufficient to convict Shelton of murder. Further, we find that the trial court did not abuse its discretion in sentencing Shelton to fifty-five years executed for the murder conviction. Finally, we do not find the fifty-five year sentence inappropriate in light of the nature of the offense and his character.

Affirmed.

BAKER, C.J., and RILEY, J., concur.